

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 28 October 2008

Case No.: 2009-TLC-00003
ETA Case No: C-08277-14934

In the Matter of

FRESH HARVEST, INC.,
Employer

Certifying Officer: Robert E. Myers
Chicago Processing Center

ORDER OF DISMISSAL

This matter arises under the temporary agricultural labor or services provision of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(a), and the implementing regulations at 20 C.F.R. Part 655, Subpart B. On October 15, 2008, Fresh Harvest, Inc., (“Employer”) requested expedited administrative review of the certifying officer’s (“CO”) October 8, 2008, decision not to accept its application for temporary alien labor certification. *See* §§ 655.104(c), 655.112(a). Employer’s filing contained a brief. On October 20, 2008, the Office of Administrative Law Judges received the case file from the United States Department of Labor’s Employment and Training Administration (“ETA”). On October 23, 2008, the undersigned issued an *Order Setting Briefing Schedule* permitting the parties to file supplemental or reply briefs no later than 4:30 pm EDT on Friday, October 24, 2008. On October 24, 2008, the CO issued an acceptance letter agreeing to consider Employer’s application on its merits. That same day, Employer timely filed a supplemental brief. On October 27, 2008, Employer filed a letter informing the undersigned of the CO’s action but requesting an order granting certification.

The regulations relating to administrative review of H-2A determinations direct the administrative law judge to review the record “for legal sufficiency” and render a decision within five working days after receipt of the case file. 20 C.F.R. § 655.112(a)(2). Under § 655.112(a)(1), the administrative law judge may not receive additional evidence or remand the matter in the course of this review. On the basis of the written record and after due consideration of any written submissions, the administrative law judge is required to “either affirm, reverse, or modify the OFLC Administrator’s denial by written decision.” 20 C.F.R. § 655.112(a)(2). Employer appealed the CO’s decision not to accept its application for consideration. The CO’s October 24, 2008, acceptance letter mooted Employer’s appeal. While Employer seeks an order granting certification, the regulations limit the undersigned to reviewing the decision actually

appealed. The undersigned has no authority to grant the additional relief Employer seeks. Accordingly,

IT IS ORDERED that this matter is hereby **DISMISSED**.

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JOHN M. VITTON
Chief Administrative Law Judge